IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 560 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

AND

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HARISINH MANSINH VASAVA

Appearance:

Mr. M.A. Bukhari, APP for appellant State.

MR ND NANAVATI for Respondent.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

Date of decision: 22/07/1999

ORAL JUDGEMENT (Per: J.N. Bhatt, J.)

In this acquittal appeal under Section 378 of the Code of Criminal Procedure, 1973 (Code), the appellant State of Gujarat has assailed the judgment and order of the acquittal recorded by the learned Sessions Judge, Bharuch, in Sessions Case No. 109 of 1984, on 15-3-1985,

whereby respondent original-accused came to be acquitted of the charges under Section 302 and 452 of the Indian Penal Code (IPC).

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#. Let us have a first broad toties quoties of the prosecution case in which it has been alleged that the respondent original-accused is responsible for complicity of committing murder of one lady Ubadi Bhura by inflicting no less than 35 blows by knife with which he was armed which instantaneously cut-short the life of deceased Ubadi. The incident occurred on 7-8-1984 between 11.00 to 11.45 A.M. in the rented house of complainant prosecution witness No.2, Saiyedkhan Majidkhan ("complainant" for short hereinafter) situated in the area of Navinagri in Dediapada of Bharuch district. The accused committed house trespass with an animus to assault on deceased Ubadi in the rented house of the complainant who belonging to the deceased and committed murder and thereby it is alleged that he is guilty of the offences punishable under Section 302 and 452 of I.P.C.

#. Upon the complaint by the complainant around 12.00 Noon immediately after the alleged incident which came to be recorded by the Police Head Constable on duty in Dediapada police station, which was not done by police Head-Constable, N.B. Narpatsingh, as narrated by complainant Saiyedkhan, upon the strength of which offence came to be registered. After making entry in the police record, investigation was carried out statements of the prosecution witness came to be recorded by P.S.I. who resumed the investigation from Head-Constable, Narpatsingh at about 5.15 on the same. The muddamal articles were forwarded to the Forensic Science Laboratory for examination and report, and upon the receipt of the receipt and the conclusion of the investigation, the charge was framed against the accused persons before the trial Court for the offences punishable under Section 302 and 452 of I.P.C., to which he denied and claimed to be tried.

#. In order to substantiate the charges against the respondent original-accused, the prosecution placed reliance on the testimonial collection comprised of the following witnesses;

(i) Deposition of P.W. No.1 of Shri Jagdishkumar Ratanjibhai Parmar, Ex.5.;

(ii) Deposition of P.W. No.2 of Shri Saiyedbhai Majidkhan, Ex.7;

(iii) Deposition of P.W. No.3 of Naynaben Suyabhai, Ex.9;

(iv) Deposition of P.W. No.4 of Surtiben Motibhai, Ex.10;

(v) Deposition of P.W. No.5 of Shri Abdul Rajak Akbarkhan, Ex.11;

(vi) Deposition of P.W. No.6 of Shri Virjibhai Bhangdabhai, Ex.12;

(vii) Deposition of P.W. 7,Thakarbhai Pragjibhai Patel, Ex.20;

(viii) Deposition of P.W. No.8 of Shri Bharatsingh Kalidas, Ex.22;

(ix) Deposition of P.W. No.9 of Shri Maganbhai Hirabhai, Ex.23;

(x) Deposition of P.W. No.10 of Shri Vithaldas Dahyabhai, Ex. 25;

(xi) Deposition of P.W. No.11 of Shri Chandubhai Bharpatbhai, Ex. 26;

(xii) Deposition of P.W. No.12 of Shri Narpatsingh Takhatsingh, Ex. 27.

#. The prosecution also placed reliance on the following documentary evidence;

(a) Map of scene of offence.

(b) Complaint.

(c) Inquest Panchnama.

(d) Panchnama of scene of offence.

(e) Panchnama of clothes of deceased.

(f) True copy of Complaint.

(g) True copy of Chapter Case.

(h) Report of Forensic Science Laboratory, Ahmedabad.

(i) Panchnama of weapons & clothes.

(j) Post Mortem notes of deceased.

#. Upon the examination, analysis and evaluation of the prosecution evidence, the trial Court reached to a conclusion that the prosecution has not been able to successfully establish the guilt of the accused of the charges against him and acquitted him by passing impugned acquittal judgment and order. In the course of the hearing before us, the learned Additional Public Prosecutor and the learned advocate for the respondent, original-accused, in defence, did take us through entire evidence, testimonial and documentary evidence.

#. It is succinctly established by the medical evidence of Dr. Maganbhai Dandia, who conducted the post mortem examination, that deceased Bai Ubadi had sustained as many as 35 wounds and injuries on her person. Following external marks of injuries were noticed as per the evidence of Dr. Maganbhai Dandia, and Post Mortem Report Ex. 24;

(1) Stab wound 6 Cms. X 2 Cms. X 4 Cms. bone deep oblique 1" below posterior aspect of right elbow joint, sharp-margines.

(2) Stab wound 5 Cms. X 3 Cms. X Muscle deep transverse front of right elbow joint, sharp margines.

(3) Incised wound 1" above lower end of radius, right wrist joint oblique, 6 Cms X 8 Cms, tendon deep, sharp margine.

(4) Stab wound upper border of left scapula oblique 3 Cms. X 1 1/2 cms X 6 Cms. sharp margines.

(5) Stab wound 3 Cms X 1 1/2 Cms X 5 Cms. verticle sharp margine, 1" below head of left humerous, anterior aspect.

(6) Stab wound, 6 Cms X 2 Cms X bone deep oblique lateral aspect of lower 1/3rd of left biaps muscle, through and through biaps muscle posterior aspect 3 Cms X 1 Cms sharp margines.

(7) Stab wound transverse, left wrist anterior aspect 3 Cms X 1 Cm X 5 Cms sharp margines.

(8) Stab wound 4 Cms. X 1 Cm X 9 Cms. oblique 1" lateral front sternum of 2nd ribs joint sharp margines.

(9) Stab wound 4 Cms X 1 Cm. oblique, medial to lateral 1" lateral to left 11th rib at Shinal joint sharp margine.

(10) Stab wound 6 Cms. X 1 Cm X 4 Cms. mid-axillary line, right axilla transverse, sharp margine.

(11) Incised wound 2 Cms X 1 Cm X Muscle deep, sharp margine 1" below to injury No.10 transverse.

(12) Stab wound 1 1/2 Cms X 1 Cm X 5 Cms. oblique right mid-axillary line 4" below to injury No.11 sharp margine.

(13) Stab wound 6 Cms. X 2 Cms X 11 Cms oblique lateral to medial 1 1/2" below to injury No.12 sharp margines.

(14) Incised wound 4 Cms X 1/2" X muscle deep, oblique sharp margines linear 1" lateral to injury No.13.

(15) Stab wound 4 Cms X 2 Cms X 13 Cms. oblique 5 Cms. above umbilicus sharp margines, medial to lateral.

(16) Stab wound 4 Cms X 2 Cms X 14 Cms. 1" lateral on left to injury No.15 sharp margines.

(17) Stab wound 3 Cms X 1Cm X 8 Cms, 4 Cms. lateral to injury No.16 sharp margine.

(18) Stab wound 14 Cms. X 4 Cms. X 18 Cms. oblique sharp margines 1" above injury No.17 lateral to medial.

(19) Incised wound, 4 Cms X 1 Cm skin deep, transverse to injury No. 18, 1" above injury No.18.

(20) Incised wound 3 Cms X 3 Cms. linear, skin deep, right lateral aspect, middle 1/3rd transverse sharp margines.

(21) Stab wound 4 Cms X 2 Cms X 7 Cms oblique middle one - third medial aspect right thigh, sharp margines.

(22) Stab wound 3 Cms. X 1 Cm X 5 Cms. transverse, 1" below suprapubic bone, sharp margine.

(23) Stab wound 1 1/2 Cms. X 1/2 Cms. X 2 Cms. transverse 1" below to injury No.22 sharp margine.

(24) Stab wound 3 Cms. X 1 Cm X 3 Cms. transverse, 1" below to injury No.23 sharp margines.

(25) Stab wound 4 Cms X 2 Cms X 7 Cms transverse upper border of right scapula 1" above sharp margines.

(26) Incised wound 1 1/2 cms X 1/2 Cm X 6 Cms transverse 3" above to injury No.25 sharp margines.

(27) Stab wound 3 Cms X 1 1/2 Cms X 6 Cms. transverse 3" above to injury No.26 sharp margines.

(28) Stab wound 4 Cms X 3 Cms. X 4 Cms. oblique 1" below injury No. 27 medial to lateral, sharp margines.

(29) Incised wound 4 Cms X 1 Cm. transverse, head of right, humerus, sharp margines.

(30) Linear incised wound transverse parallel to injury No.29 1 1/2" below to No.29, 4 Cms. X 1/2 Cm. skin deep, sharp margines.

(31) Incised wound transverse 2 Cms X 1/2 Cm, 1" below to injury No. 30 sharp margines, skin deep.

(32) Stab wound 4 Cms X 2 Cms X 7 Cms oblique lower angle of right scapula, sharp margines.

(33) Stab wound 4 Cms X 1/2 Cm X 9 Cms. oblique 1 1/2" below injury No.32 sharp margines.

(34) Stab wound 4 Cms. X 1 1/2 cms X 6 cms, transverse at L-2 spine level, sharp margines.

(35) Incised wound 3 cms X 1/2 cms transverse right posterior superior iliac spine, skin deep sharp margines.

#. It is also clearly testified by Dr. Dandia in his post mortem notes Ex.24 that he has noticed the following

internal marks of injuries on the dead body at the time of post mortem;

III. INTERNAL EXAMINATION.

Head:-

(i) Injuries under the scalp their nature.

(ii) Skull - Vaultance base describe fracture, their situations etc.

(iii) Brain:- The appearance of its covering size, weight and general condition of the organ itself and any abnormality found in its exam to be carefully noted.
(Weight M. 3 lbs F 2-75 lbs.).

#. It could very well be seen from the aforesaid nature and number of injuries sustained by the deceased and noticed by the Medical Officer that they were possible by a sharp-cutting instrument, knife, and they were sufficient in ordinary course of nature to cause death. It is, therefore, amply and evidently established, without doubt, by the prosecution that deceased Bai Ubadi died of homicidal death which, as such, was very heinous and macabre as she sustained not less than 35 serious injuries which were possible by sharp-cutting instrument, muddamal knife.

##. The trial Court has reached to a conclusion that the offences are not established against the accused, though, in view of the aforesaid medical evidence, the homicidal death was proved for the reasons which we hastened to articulate here as under;

(I) The evidence of complainant Saiyedkhan does not inspire the confidence as two other eye witnesses namely Nayna Ex.9 and Surti Ex.10 have not supported the prosecution case.

(II) The evidence of prosecution witness Abdul Razak, the brother-in-law of complainant, examined at Ex.11 is a chance witness and his evidence does not fully support the prosecution case.

(III) The panch witnesses, Thakarbhai at Ex.20 and Bharatsingh at Ex.22 have turned hostile and therefore they have not supported the prosecution case.

(IV) The prosecution has not successfully established the nexus with the injuries and the authorship thereof. The illicit relationship between deceased Ubadi and the complainant is an indication of partisanship. The complainant and eye witness is also not relied on, on the ground that he did not intervene when deceased was being given one after the other successive knife blows allegedly by the accused in his own house in front of him and therefore it was a doubtful circumstance and the benefit of doubt should go to the accused. That the conduct of the complainant is not free from suspicion and therefore also the benefit of doubt should go to the accused.

(V) Many other persons had collected at the venue of offence, but the complainant did not mention the name of any witnesses or the neighbours collected there in his complaint.

##. The learned Additional Public Prosecutor has serious criticized the manner and mode and the methodology employed in appreciating the evidence of the prosecution by the trial Court and has seriously contended that the trial Court has seriously erred in passing impugned acquittal order, whereas the learned advocate appearing for the respondent original-accused has supported the impugned judgment and order and has countered the submissions raised by the learned Additional Public Prosecutor.

##. It could safely be concluded that the controversy which has shrunk down in narrow dimensions in homicidal death which was heinous in character and dire in category, is undeniable. To the point as to who was the real author of the murder in question was by the respondent accused ? If yes, whether the evidence led by the prosecution against him, is unerringly pointing out the complicity of the accused for such an offence or not? and if yes, what should be the quantum of sentence. These are the questions which have come up for consideration and adjudication in this acquittal appeal.

##. After having given our anxious thoughts and dispassionate deliberations to the evaluation made by the trial Court, we are of the opinion that the prosecution has successfully established the culpability of the accused for committing murder after committing trespass in the house of the complainant, without any shadow of

doubt. To us, it is abundantly evident that the reasons which are assigned, the views adopted by the trial Court and the ultimate conclusion recorded are not sustainable. We are mindful of the fact, the parameters of the appellate Court exercising its powers under Section 378 of the Code while appreciating the merits of the acquittal appeal, are, to an extent, circumscribed as the interference may not be expedient or permissible in some cases only because a better and higher perspective can be made upon the analysis of the evidence of the prosecution. In other words, if two views are possible upon the examination of the evidence, and one of them is the view taken by the trial Court in the impugned judgment and order, it would not, ipso facto, constitute a ground for exercising powers by an appellate Court under Section 378 of the Code on that ground.

##. However, so is not the factual scenario emerging from the record of the present case. The facets and factors, upon which the impugned acquittal order is founded upon, which we have highlighted hereinabove, are not sufficient to hold that the prosecution has failed to establish the guilt of the accused for the offences punishable under Section 302 and 452 of the IPC beyond reasonable doubt. No doubt, we are also conscious of the fact that even in a case, a reasonable doubt is created or there is a scope for some doubt, the benefit must go to the accused. Nonetheless, the doubt must be of a reasonable person or a prudent ordinary person and not a doubt of a person who is afforded of the consequences. In State of Gujarat vs. Gambhirsingh Narubha Jadeja - 39 (3) G.L.R. Page 2043, a Division Bench of this Court (one of us J.N. Bhatt, J. was a party), has highlighted the doctrine of doubt and the resultant benefit to the accused and the parameters thereof. It has been clearly held that doubt must be a reasonable doubt which is simply that degree of doubt which would permit to reach a conclusion, and principles in that regard, elaborately stated in Paras 22 & 23, in that decision, are very relevant and we would like to highlight the same again hereunder for the simple reason that the Court is obliged to consider a doubt and if it is reasonable, benefit must be conferred to the accused, as that is one of the fundamental principles of criminal jurisprudence we have wedded to, but at the same time, it must be remembered in the light of the principles that the doubt which can be taken cognizance of not that of a weak or oscillating and vacillating capricious, indolent or confused mind;

"22. In view of the settled proposition of law

by catena of judicial pronouncements on this point, the following aspects may be highlighted so as to bring home the pointer that, though, it is the duty of the Court to afford the accused with celebrated principle of benefit of doubt, if it is reasonable and available from the set of facts, cannot be allowed to the extent where there is no reasonableness or justness and where there is no pointer furnished :

(i) the doubt must be reasonable and real, not fanciful;

(ii) the doubt must be of reasonable man, neither a weak, meek and timid man afraid of legal consequences;

(iii) reasonable doubt is simply that degree of doubt which would permit reasonable and just person to reach conclusion;

(iv) reasonableness of doubt must be commensurate with nature of evidence to be investigated upon. Ultimately, there is element and the degree of suspicion varies from accused to accused;

(v) exaggerated deviation to the rule of benefit of doubt must not nurture fanciful doubts and thereby destroying social defence;

(vi) it be remembered that justice cannot be made sterile upon doubt which is not of prudent, and reasonable person;

(vii) doubt would be called reasonable when it is uninfluenced by zest and enthusiasm for abstract speculation;

(viii) doubt should not be mere vague appreciation;

(ix) reasonable doubt must generate and flow from evidence on record;

(x) reasonable doubt is not an imaginary, trivial but a doubt based upon reasons and common sense;

(xi) forensic probabilities must rest on sound

common sense and finally upon a trained infusions of the Judge;

(xii) while the protection affordable to the accused of doctrine of benefit of doubt from the record of the case cannot be allowed to be eroded at the same time, uninformed legitimization of trivialities obviously would culminate into a mockery of dispensation of justice in criminal trial;

(xiii) reasonable doubt must have fair basis and logic and not speculation or luck;

(xiv) it is the doubt of a reasonable astute and alert mind arrived at after due application of mind to all facts. It is not a doubt which occurs to a wavering mind;

(xv) it is the doubt which occurs to a reasonable man and which has legal recognition in the realm of criminal cases;

(xvi) the doubt which can take cognizance of not that of a weak or oscillating and vacillating capricious, indolent or confused mind.

23. We have highlighted the aforesaid aspects emerging from the settled proposition of law in series of decisions which point out that creditworthy reliable evidence of eye-witnesses or for that purpose, even circumstantial evidence from the record cannot be crucified or jettisoned by raising or inferring fanciful doubt. We have noticed that the trial Court has adopted not only unreasonable but perverse approach in discarding the reliable evidence of eye-witnesses which undoubtedly, has intrinsic quality and forensic worth. The view which the trial Court reached in discarding the testimony of two real eye-witnesses is totally, unjustified. It cannot be said that for a moment that the view taken by the trial Court for rejecting their evidence was even remotely plausible. We are,therefore, left with no alternative but to hold that the entire approach of the trial Court is not only misconceived but is manifestly perverse."

##. It is true that the prosecution witness No.3 Nayna examined at Ex.9, and prosecution witness No.4 Surti examined at Ex.10, have turned hostile to the prosecution case and they have not supported the evidence of the complainant though they were present at the time of the incident. It is also true that the prosecution witness, No.5, Abdul Razak, Ex.11, has not fully supported the case of the prosecution. Could these aspects be characterized as weakening or giving rise to a reasonable doubt, in so for as the evidence of the complainant prosecution witness No.2 Saiyedkhan is concerned. Needless to state that the authenticity, the reliability and the dependability has to be judged on the strength of the evidence of the witness and not on the evidence of other witnesses, who have, for reasons best known to them, turned hostile to the prosecution case. It is also settled proposition of law that it is the quality, it is the competence,it is the reliability even of a sole witness that matters, and it could become a base for conviction and not the weaknesses or contradictions or irregularities noticed in the evidence of other witnesses. We have successfully noticed after giving our anxious consideration to the entire testimony of prosecution witness No.2, Saiyedkhan Majidkhan at Ex.7 that he is a witness of truth, his testimony is dependable and it creates and inspires our confidence, the strength of which we have seen in the evidence of the complainant Saiyedkhan could not be sabotaged or weakened by the factum that other two eye witnesses have turned hostile to the prosecution case. Again, in both these hostile witnesses' testimony, in cross-examination, it is noticed that they have given a go-by to the original factual situation narrated by them in the statement before the police for the reasons not known to us. Be that as it may, simply because they have not supported the prosecution case, that would not, ipso facto, lead to an inference that the evidence of the complainant is weakened and therefore not relied.

##. We have gone threadbare the entire evidence of the complainant, and we have found that he is a witness, whose presence, at the venue of offence, was natural because it was his house and the manner and mode in which he has given the account of the incident is the radiation of imprint of truth which has remained unworshipped and unimpeachable despite searching cross-examination. We, therefore, are unable to subscribe to the views of the trial Court, that the evidence of the complainant is suspicious or creates some doubt about the authenticity of the prosecution version, nor clear and coherent

considered opinion. The complainant's narration of the account is quite truthful, dependable and trustworthy and the trial Court ought to have placed reliance on his testimony.

##. There are numerous reasons, why the testimony of the complainant ought to have been relied on by the trial Court and why we find his testimony dependable and trustworthy, without any doubt. Few of them may be highlighted here as under;

(i) It was he who immediately rushes to Dediapada police station and lodges a complaint without any loss of time within half an hour. It is an important event succeeded the incident which has been lost sight of by the learned trial Court Judge. In case of delay, which has not been accounted for, it could be argued that the complainant had sufficient time to manipulate. This is the case where such a hypothesis has no role. A complainant, who immediately, after having seen the accused giving successive knife blows on the person of deceased Ubadi, and after accused fled away from the venue of offence, and finding that the deceased was no more, obviously, a reasonable and prudent ordinary person, would react in a way as the complainant did. He immediately went to the police station and gave the account of the incident which was recorded by Police Head-Constable, Narpatsingh, P.W. 12, Ex.27. So, the complaint, which is an important piece of corroborative evidence, came to be lodged without any loss of time and which was recorded as narrated by complainant which is produced at Ex.8, fully reinforces the testimony of the complainant. This factum of lodging FIR, without loss of time, before the competent police officer, and narrating the same incident and deposing the same incident before the Court, lends very significant support to the evidence of the complainant.

(ii) There was motive on the part of the accused to resolve to the ghastly killing but deceased Bai Ubadi, as it is noticed from the evidence and which is not questioned before us, was living with the accused as his wife. Both of them lived as husband and wife in the eyes of the society for almost a spell of 8 years and obviously when he sees his beloved and a person near to her as he believed though she may be not very dear to

only him in the company of the complainant on the day of the incident, obviously would not like. However, instead of taking recourse to the law, accused who had come with a knife started giving blows after blows. There was exchange of words as noticed from the record between the deceased and the complainant. It is also noticed by us from the evidence that the deceased and the complainant Saiyedkhan had also intimate relationship which obviously would not be of liking of the accused.

(iii) Complainant is the tenant of deceased Bai Ubadi who had rented a part of the house at a monthly rent of Rs. 80/-, and the deceased Bai Ubadi was the landlady. It is also noticed by us that deceased Ubadi, landlady of the house of the complainant had gone to Dediapada where her house is situated to attend a meeting of Panchayat and she also gone to the place of complainant for the obvious reasons and in between them unfortunately for the deceased, accused reached to the venue and found his dear ones in the company of complainant.

(iv) The deceased was, though stayed with accused for almost a period of 8 years probably, may be enjoying the company not of a marital bliss, as earlier also accused had inflicted axe blow on her person for which the deceased had lodged complaint. The documentary evidence produced at Ex.17 is the complaint of the deceased against the accused, Ex.18 is the certified copy of the order recorded in a category of criminal case known as "Chapter Case", which is also reinforced by the evidence of the son of the deceased Virji Bangra, P.W. at Ex.12. It is clearly testified by him that his deceased mother was attacked by the accused with axe blows and the complaint was lodged against him by the mother. This is also a motive. Of course, once the complicity of the accused is established, without any reasonable doubt, the motive falls into insignificance. However, we have highlighted it for the reason that it is a factor which materially and substantially lends support to the testimony of the complainant Saiyedkhan.

##. One of the reasons why the learned trial Court Judge has refused to place relevant evidence of the complainant is that though he is a eye witness as he had seen the

multiple blows of knife inflicted upon the anatomy of the deceased, he did not intervene and therefore it creates an imprint of suspicion. With great respect to the learned trial Court Judge, it may be stated, that merely because a person does not dare to interfere or thinks it unreasonable and unsafe to interfere, or for any reason whatsoever does not interfere, could not be, ipso facto, characterized a minus point while assessing the authenticity and credibility of testimony of a witness. It may be, as a truthful witness for variety of reasons one may not interfere. It may be converse in some cases that a person who may be moralized may try to interfere. Merely because a person does not intervene, it would not justify the inference that his presence was there and he is giving true and correct voluntary account of the incident or vice versa. This proposition, with due respect to the learned trial Court Judge, has not been examined and appreciated in its correct focus. The unfathomable thing is the mind of the person and his behavioural perception. How one would react would obviously and evidently depend upon variety of circumstances. Therefore, it could not be said to be safe to conclude, that the circumstance, that merely because a person, who is a witness to an incident and who has seen the infliction of multiple blows, failed to intervene, itself is a doubtful circumstance. The proposition, which we have considered, and which the learned trial Court Judge failed to appreciate, is very well propounded in host of judicial pronouncements. We would like to highlight one such important decision of the Hon'ble Apex Court in Angad Vs. State of Maharashtra - 1981 Criminal Law Journal 733, wherein it has been clearly observed in Para 13 that the Court cannot reject the evidence of a eye witness who is otherwise truthful and creditable merely on the ground that he did not intervene to save the life of the deceased.

##. It would be pertinent to refer the decision rendered in Basit Ali and another vs. State of Madhya Pradesh 1976 Criminal Law Journal 776 (M.P.) wherein while examining and appreciating the provisions of Section 3 of the Evidence Act, the Hon'ble Apex Court has clearly observed in Para 7 that it will not be appropriate to reject the evidence of the eye witness only on the ground that instead of behaving in the manner he did he should have preferred to have in the manner suggested by the defence. In the present case also, we find that the manner and mode in which the ghastly cruel offence was being committed with a sharp-cutting instrument like knife in a residential house, non-interference by the complaint was natural and it can never be said to be

unnatural at least. Apart from that, only on this ground the testimony of a eye witness who is otherwise trustworthy could not be thrown overboard. It must also be remembered that the `falsus in uno falsus in omnibus' is not the maximum recognizable and appreciable in evaluating the evidence in a criminal trial. This proposition even, in the light of the provisions of Section 118 of the Evidence Act, 1872, does not apply in a criminal case. This proposition is very well examined and explored and settled in S.G.P. Committee Vs. M.P. Cass Chela (Dead) by LRs. - (1998) S.C.C. 157. It has been clearly observed by the Hon'ble Apex Court, while appreciating the provisions of Section 118 of the Evidence Act, that when witnesses are disbelieved on some points would not necessarily mean that they should be disbelieved on other points. The purpose, the policy and the maxim or the doctrine of `falsum in uno falsum in omnibus' has been succinctly propounded and explained. Therefore, there is no substance in the contention that the eye witness complainant should not be relied on.

##. While concluding, we may articulate that following aspects have remained unimpeachable all throughout and which would undoubtedly attracted the rigors of the provisions of Section 302 and 452 of the I.P.C.;

(i) The complainant, prosecution witness No.2, Saiyedkhan was a tenant of deceased landlady Ubadiben and the macabre crime was committed in the house occupied by complainant;

(ii) Deceased Ubadi was inflicted as many as 35 knife blows as per the evidence of the complainant and the evidence relied on by the prosecution and they were sufficient in ordinary course of nature to cause death and which has culminated into her death;

(iii) The presence of the complainant and deceased when accused came with knife was unnatural is proved without doubt;

(iv) Deceased and the accused were living as husband and wife since almost last 8 years before the occurrence of the incident. The incident occurred only after when deceased was seen in the company of the complainant by the accused against whom in the near past a complaint was lodged by the deceased for having assaulted with axe on her;

(v) There was a motive for the commission of the crime. The complaint came to be lodged without any loss of time and it was recorded at the Dediapada police station, as narrated by the complainant, prosecution witness No.2, which is proved to the guilt, which lends material reinforcement and corroboration to the testimony of the complainant;

(vi) The motive as such not necessary to be established but when proved is of additional circumstance indicating support to the evidence of the complainant and the case of the prosecution. In the present case, prosecution has proved to the guilt, the motive for the happening of an unfortunate murder, that the accused had entered with a knife in the house occupied by the complainant with an intention to assault on the deceased as there was break down in their relationship and when accused was feeling that deceased was keeping more intimate relationship with the complainant and again she was found that he is in the house occupied by him;

(vii) The find of blood marks of the same group as that of the group noticed on the clothes of the deceased, and the clothes of the accused as per the Serological Report. Of course, though the panchas have turned hostile to the prosecution case, the whole evidence could not be said to have been rendered uncredited. It is not a proposition that the evidence of the hostile witness invariably should also be discarded;

(viii) The incriminating muddamal knife recovered from the accused was also tainted with some blood group as per the FSL report.

##. After having given our anxious consideration to the aforesaid factual scenario emerging from the record of the present case and the rival submissions and the relevant proposition of law, we are of the opinion that the learned trial Court Judge, while recording the impugned acquittal judgment and order, upon the analysis and the evaluation of the evidence of the prosecution, has acquitted the accused of both the charges, and, in our opinion, the views taken by the trial Court and the ultimate conclusion recorded are not only unjust, unreasonable, but, with respect perverse, and, therefore, the impugned acquittal order is required to be quashed

and set aside. We have noticed, without any doubt, that the prosecution evidence has, undoubtedly and successfully, transfusing, beyond reasonable doubt, the culpability of the accused for offences punishable under Section 452 & 302 of the Indian Penal Code. While setting aside the acquittal order, we have no hesitation in holding and finding that the respondent original-accused guilty for the offences punishable under Section 302 and 452 of the Indian Penal Code. We deem it expedient to call the respondent original-accused so as to afford an opportunity of hearing on the quantum of sentence as mandated by Section 235 (2) of the Code. Since the learned advocate for the respondent-accused has assured us that appropriately accused will be intimated about the next date of hearing so that he could be heard, we do not propose to issue non-bailable warrant at this stage. Stand over to 29th July 1999.

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##. After taking a statutory pause in the light of the provisions of Section 235(2) of the Code of Criminal Procedure (Code), let us now refer to the quantification of sentences for the proved offences punishable under Section 302 & 452 of the Indian Penal Code. We have heard the learned Advocate, Mr. Chhaya for the accused in defence and learned Additional Public Prosecutor, Mr. Bukhari on the quantum of sentence.

##. Since we are of the opinion that this is not a case of extreme penalty of death, we are left with no alternative but to impose minimum sentence of imprisonment for life as prescribed under Section 302 of the Indian Penal Code, and also impose a fine of Rs. 1000/-, in default to undergo rigorous imprisonment of one month. Of course, accused, though called by his Advocate, Mr. Chhaya, by writing a letter, he has not responded. Therefore, it was pointed out by learned Additional Public Prosecutor, Mr. Bukhari that since he is not pressing for extreme penalty for death for the offence under Section 302, it would not be necessary as such to hear the accused on the quantum of sentence as minimum sentence is requested to be imposed. In this connection, he has placed reliance on the decision of the Hon'ble Apex Court in Tarlok Singh Vs. State of Punjab AIR 1977 S.C. 1747, in which it is succinctly propounded that when there is a case of conviction under Section 302 of the Indian Penal Code and if the minimum sentence is imposed, the question of providing an opportunity of hearing under Section 235 would not arise. Nonetheless, we have heard the learned advocate, Mr. Chhaya for the accused on the quantum of sentence. Of course, he has

very vividly highlighted the advance age of the accused. According to him, the accused has now reached the age of 67 and he was also given bail during the period of trial so as to convince this Court as it will be a great trauma at this age and at this stage, for a person like accused to be visited imprisonment for life, as probably, according to him, he will not be able to come out completing the tenure till he completes that mortal life. Be that as it may, uninfluenced by any other factor, it is the duty of the Court to perform the statutory mandate and since minimum sentence is imprisonment for life, the Court cannot help. However, it will be open for the accused to appropriately pursue other remedies for remission before the appropriate forum. Since we have imposed punishment of imprisonment for life under Section 302 of the Indian Penal Code, and fine, we do not think it necessary to pass separate order of sentence for the proved offence punishable under Section 452, Indian Penal Code. Hence, no separate sentence is awarded.

##. Since the accused is on bail and despite the intimation and request by his Advocate, he has not appeared and therefore we hereby direct for non-bailable warrant so that he could start serving out the sentence imposed by us hereinabove.

##. After having taken into account the entire testimonial collection, the documentary evidence, the concurrent catalogue of events, the relevant proposition of law, and the rival submissions, we are fully satisfied that the impugned judgment and order of acquittal, recorded by the trial Court, is unjust, unreasonable and perverse and therefore it is quashed and set aside, and substituted by the aforesaid order of conviction and sentence. Since the trial Court has directed for destruction of muddamal, it would not be necessary to disturb it. Hence, it is confirmed.

Date: 29-7-1999.
(rmr).